

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JASON M. JONES,

Plaintiff,

vs.

DOROTHY NASH HOLMES, et al.,

Defendant.

3:11-cv-00047-LRH-WGC

**ORDER**

re Defendants' Motion to Strike

Doc. # 74

Before the court is Defendants' "Motion to Strike Plaintiff's [Proposed Amended] Complaint (Court Docket 67)." (Doc. # 74.)<sup>1</sup> Plaintiff has opposed the motion. (Doc. # 74.) No reply was filed.

On or about January 10, 2014, Plaintiff filed a document entitled "Civil Rights Complaint Pursuant to 42 U.S.C. § 1983." (Doc. # 67.) No case number was inserted into this form document. The last page of the document included a handwritten note (Doc. # 67-1) to the "Clerk of Court" which at the bottom noted, in the same handwriting:

THANK YOU

**and can I amend**

**my complaint w/ this one**

(*Id.*; emphasis added)

Defendants' motion (Doc. # 74) reviews the intricate history of this case. Defendants reference the court's March 20, 2013 scheduling order (Doc. # 32) which set a deadline for amending the pleadings or joining additional parties of 60 days from the date of the order (May 20, 2013). Defendants argued

<sup>1</sup> Refers to court's docket number.

1 Plaintiff's "motion" was untimely.

2 Any proposed amendment of a pleading is supposed to be effected by motion. Local Rule 15-1.  
3 Even liberally interpreting Plaintiff's letter to the clerk as constituting a motion, and disregarding the  
4 timeliness issue for now, the Plaintiff's request does not provide the court sufficient information to be  
5 able to evaluate the propriety of Plaintiff's proposed amended complaint.

6 More specifically, the action is currently pending against named defendants Romeo Aranas,  
7 Isidro Baca, Cheryl Burson, James "Greg" Cox, Roland Daniels, Jerry Howell, Paula Miller, Umair  
8 Moten, Dwight Neven, Francisco Sanchez, William Tate, Kay Weiss, Brian Williams, Sr., Connor Wolf,  
9 Cole Morrow, Howard Skolnik and David Mumford. The underlying action asserts a myriad of claims  
10 for retaliation, improper classification, denial of medical care, supervisory liability, etc. See, generally,  
11 Screening Order, Doc. # 19.

12 The proposed 64 page amended complaint (Doc. # 67) identifies defendants Warden Neven,  
13 Nurse Greene, James \_\_\_\_\_ (nurse), Nicole \_\_\_\_\_ (nurse), Kelly \_\_\_\_\_ (nurse) and (in the caption)  
14 "H.D.S.P. Medical Staff, numerous Correctional Officers to be named & Clark County Detention  
15 Center, Univ. Medical Center, Defendants." (*Id.*, at 1-3.) None of these parties are defendants in the  
16 current proceeding. Generally speaking, the subject matter of Plaintiff's filing (Doc. # 67) pertains to  
17 an alleged denial of medical care.

18 Following the filing of Defendants' motion to strike Plaintiff's proposed amended complaint  
19 (Doc. #74), Plaintiff filed his opposition (Doc. # 75). In contradiction to his letter (Doc. # 67-1) which  
20 asked the clerk to "amend [his] complaint with this one" (i.e., Doc. # 67), Plaintiff now states his  
21 submission was supposedly *not* intended to effect an amendment of his existing complaint but to be a  
22 *new* action:

23 Court Docket 67 was never intended for an Amended Complaint. It was  
24 supposed to be filed as a new 42 USC 1983 Complaint.  
(Doc. # 75 at 1.)

25 At page 2 of his opposition, plaintiff states, again,

26 I would like the following Document please and my 42 USC 1983 dated  
27 Jan. 10th 2014 submitted by itself not as a amended complaint. It was  
never intended for that. \* \* \*

28 (*Id.*)

1       Accepting Plaintiff's latest characterization of Doc. #67 as being a new complaint and not an  
2 attempt to amend Plaintiff's existing complaint, good cause appears to **STRIKE** Doc. # 67 from the  
3 docket in this matter (although not necessarily for the reasons stated in Defendants' motion (Doc. # 74),  
4 which was filed before Plaintiff clarified the characterization of his submission). However, in the event  
5 of an appeal, the record should retain this document to explain the confusion which Plaintiff has created.

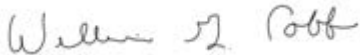
6       The Clerk of Court shall nonetheless re-file Plaintiff's civil rights complaint (Doc. # 67) as a new  
7 action. However, because no filing fee was paid nor was an Application to Proceed *in forma pauperis*  
8 submitted, Plaintiff shall have **thirty (30) days up to and including March 24, 2014**, to submit a  
9 completed Application to Proceed *in forma pauperis* or pay the filing fees. The Clerk shall send to  
10 Plaintiff the appropriate form Application to Proceed *in forma pauperis*.

11       Plaintiff is advised that his failure to timely comply with this order will result in a  
12 recommendation that the new action which is filed as a result of this order be dismissed.

13       Defendants' motion (Doc. # 74) is **DENIED** as moot.

14 **IT IS SO ORDERED.**

15 **DATED: February 21, 2014.**

16   
17 WILLIAM G. COBB  
18 UNITED STATES MAGISTRATE JUDGE  
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